AMERICAN BAR ASSOCIATION ON TECHNICALITIES.

THE AMERICAN BAR ASSOCIATION ON REVERSALS FOR TECHNICALITIES.—Two years ago the American Bar Association appointed a special committee to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation. Among the members of the committee were Everett P. Wheeler and Henry D. Estabrook of the New York bar, Joseph H. Beale of Boston, Charles E. Littlefield of Portland, Judge Charles F. Amidon of the United States District Court and Professors Roscoe Pound of Chicago, William E. Mikell of Philadelphia and John D. Lawson of Missouri. A bill prohibiting reversals for errors which do not result in miscarriages of justice and for introducing other needed reforms in our federal procedure was prepared by the committee, adopted unanimously by the Bar Association and is now before Congress. In the last issue of the *Journal* we commented in some detail on the provisions of this bill. In the course of the debate in the association on the provision relating to reversals, Stephen H. Allen of the Topeka, Kan., bar, formerly chief justice of the Supreme Court of Kansas, stated the proper attitude of the legal profession in the following words:

"These sections go straight at the evil that has been, and is, a great reproach to our profession and to the administration of justice in this great country. We may just as well face the proposition now as later that the general consensus of opinion of the people of the United States is opposed to the technicality that so often disposes of trials and causes retrials, and often trials multiplied many times, because of the disregard of a simple old-time rule of procedure that has no foundation and no merit in fact. The amendments that are proposed by this committee seek to place substance above form. We lawyers learn our different systems of procedure, we try to learn the equity rules, the admiralty rules, bankruptcy rules, the different common law rules and the code rules of all of the different states, in order that we may fit ourselves to practice in the federal courts; but we are confronted with a chaotic condition so far as the mere rules of procedure are concerned. Of course, I am strongly attached to a strict adherence to the law as any gentleman here, but I am utterly opposed to having the great profession to which we belong open to the charge of being mere pettifoggers in every court, from the highest to the lowest."[1]

Frederic W. Lehmann of the St. Louis bar and president of the American Bar Association, speaking along the same line, called attention to a recent decision of the Supreme Court of Missouri (*State v. Campbell*, 210 Mo. 202), in which the Court granted a new trial for the omission of the article *the* from the indictment. Using this case as an illustration of the perils to which technicalities may actually lead in practice, he said: "Let me put in concrete form what is aimed at by this report. A man having a young woman under his protection as his ward ravishes her. Upon indictment by the grand jury and upon trial by the petit jury he is found guilty. Upon appeal the conviction is set aside, because by carelessness of the draughtsman of the indictment or by the oversight of a copyist the definite article *the* was omitted from the concluding phrase of the indictment. Suppose, then, a similar crime was committed in my neighborhood, and the natural resentment that such a crime provokes in the breast of every man would kindle the people to do mob violence against the offender. Let me come out and try to quiet that mob and say:

[1]American Bar Association Reports, 1909, p. 71.

'Take not justice into your own hands, but leave it to the orderly administration of the law.' What do you think would be the answer? 'We have no respect for a law which puts the definite article *the* in sanctity above the chastity of our wives and daughters.' That is what is aimed at in this report. That is the purpose of it, to make an end to those things which bring the law into contempt and disrepute, and which make you and me ashamed of it when we are arraigned at the bar of the common sense of mankind. It is a duty that we owe to ourselves and our country to bring the law of the land into harmony with its good sense and its best conscience. That is the purpose of the bill, and no other. We invade no constitutional rights. We simply stand upon the rights of society and insist that they shall be regarded here. I submit that you will deal a severe blow to the utility of this association if you go upon record as continuing through this generation not the substance of the common law, but the casuistry and frailties imposed upon it in the dark days of the past. It is our duty to relieve the law from them. And that is the purpose of this report."[2]

J. W. G.

PROBLEMS OF INSANITY.—Dr. Adolf Meyer, in the Journal of the American Medical Association for June 11, discusses the problems of the physician concerning the criminal insane and borderland cases. According to Dr. Meyer most lawyers consider insanity as a condition characterizing a more or less final subdivision of humanity which is, or should be, fenced in by asylum walls. He thinks that insanity is not a disease in the sense in which tuberculosis or leprosy are diseases, but that it is a condition to which a number of totally different diseases may lead. As we are not dealing with a definite unit but with widely different disorders, Dr. Meyer thinks that we should speak of "insanities" rather than of "insanity," the link between the various forms being found in the necessity of interference with the patient's individual control and legal responsibility. The patients get themselves or their friends into innumerable difficulties until the point is finally reached at which they have to be checked. Where the danger is acute and great, control is easily managed, but in many cases patients are quite as unable to control themselves, as the more violent cases, yet are able to remonstrate and resist in such a way as to appeal to their fellow citizens and to demand legal consideration. General hospitals are unsuitable for such patients. Often merely a quiet, orderly life with occupation and rest is sufficient. The only places available for such patients are private sanitoria and state institutions, admission to which, Dr. Meyer says, is difficult on account of the barbarously inconceivable fence of laws regulating admission to those institutions which alone are admittedly equipped to give help to the patients. The whole conspiracy of facts and imaginations and traditions has created a class of humanity under a special legal ban called forth for the protection of a few cantankerous individuals where all that is necessary is the application of the quarantine principles and provisions for legal reinforcement of medical persuasion and advice. Dr. Meyer holds that the control and restriction of the insane should be based on the quarantine principle rather than on the principles of criminal law with its provisions that nobody can be punished for a thing that has not been done. He holds that it is an anomaly to require a legal decision for admission to a hospital when there is not the slightest objection on the part of anyone "merely to do justice to the rail-

[2]Ibid, p. 78.